

ENTERED

March 13, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ANA J. PENA,

VS.

ANDREW SAUL,
Commissioner of the Social Security
Administration

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CIVIL ACTION NO. 7:19-CV-00005

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Plaintiff Ana J. Pena's appeal of the Commissioner's determination that she is not entitled to receive Disability Insurance Benefits or Supplemental Security Income. The appeal was referred to the Magistrate Court for a Report and Recommendation. On December 26, 2019, the Magistrate Court issued the Report and Recommendation, recommending that Plaintiff's request to amend her complaint be **GRANTED**, that Plaintiff's motion for summary judgment be **DENIED**, that the Commissioner's motion for summary judgment be **GRANTED**, that the Commissioner's decision be **AFFIRMED**, and that this case be **DISMISSED**. Plaintiff has filed timely objections to the Magistrate Court's Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court has made a de novo determination of those portions of the report to which objections have been made. As to those portions to which no objections have been made, in accordance with Federal Rule of Civil Procedure 72(b), the Court has reviewed the report for clear error.¹

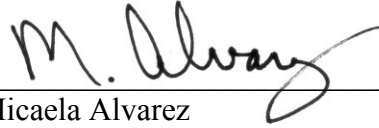
Having thus reviewed the record in this case, the parties' filings, and the applicable law, the Court adopts the Report and Recommendation in its entirety. Accordingly, Plaintiff's request to amend her complaint is **GRANTED**; thus, the constitutional challenge to the ALJ is considered. Nonetheless, Plaintiff's motion for summary judgment is **DENIED**, the

¹ As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.' " *Douglas v. United States Service Auto. Ass'n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superseded by statute on other grounds by* 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n. 5 (5th Cir. April 2, 2012).

Commissioner's motion for summary judgment is **GRANTED**, the Commissioner's decision is **AFFIRMED**, and this case is **DISMISSED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 13th day of March, 2020.

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez
United States District Judge